UNITED
NATIONS

AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 854

Case No 953: ISLAM

Against : The United Nations Joint Staff Pension Board

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, Vice-President, presiding; Mr. Mayer Gabay; Ms. Deborah Taylor Ashford;

Whereas, on 10 November 1996, Md. Matiul Islam, a participant in the United Nations Joint Staff Pension Fund, filed an application requesting the Tribunal, in part:

> "[The production of certain documents and the rescission of the decision by the Standing Committee of the United Nations Joint Staff Pension Board] that the two periods of [the] Applicant's Pension Fund participation (3 January 1982 - 30 June 1987 and 13 September 1987-28 February 1993) could not be linked under article 21(b) of the [Pension] Fund's Regulations.
>
> ...
>
> 8. [While] the Applicant does not dispute the facts of the case and the pronouncement of the Standing Committee that [the Pension] Fund's Regulations as adopted left no room for discretionary decisions by the Pension Board. ... the Applicant's contention is that he has not exhausted all avenues for getting redress of his grievance and that [the] UN legal system provides for statutory institutions like the Administrative Tribunal and the International Court of Justice with discretion to pronounce judgements in such cases entirely on its merits with powers of interpretation [of] the Rules and Regulations of the Pension Fund to ensure that its straight-jacket application does not lead to or result in gross injustice to the pension-holders.

...

10. The Applicant, therefore, appeals to the Administrative Tribunal to give its judgement in the case ..."

Whereas the Respondent filed his answer on 26 March 1997;

Whereas the Applicant filed written observations on 24 June 1997;

Whereas, on 5 November 1997, the Applicant filed additional documents with the Tribunal;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations Industrial Development Organization (UNIDO) on 2 January 1982. He had been a participant in the UN Joint Staff Pension Fund (the UNJSPF or the Pension Fund) from that date until his separation from UNIDO on 30 June 1987. On 24 June 1987, the Applicant opted for an early retirement benefit, without any lump-sum commutation. In accordance with his instructions, he commenced receiving that benefit in August 1987.

On 13 September 1987, the Applicant re-entered the Pension Fund as a staff member of the United Nations Development Programme (UNDP). Payment of his early retirement benefit was thereupon suspended in accordance with article 40(a) of the Regulations and Rules of the UNJSPF (the Pension Fund Regulations).

On 18 May 1988, the Applicant wrote to the Secretary of the Pension Fund, requesting to contribute for the period of his break in service from 1 July to 12 September 1987, in order to link his prior service with UNIDO to his current service with UNDP. In a reply dated 14 July 1988, the Secretary of the Pension Fund advised him (a) that he could not pay contributions to make pensionable the period when he had not been a staff member and (b) that under article 24(a) of the Pension Fund Regulations, his prior contributory service, from 3 January 1982 to 30 June 1987, could not

be restored (he had not been entitled to a withdrawal settlement under article 31(b)(i), as he had more than five years of contributory service); and (c) that he could not link his two periods of contributory service under article 21(b) of the Regulations, as he had been paid a benefit.

On 4 and 15 January 1993, the Applicant wrote to the Secretary of the Pension Fund, reiterating the request to be permitted to link his two periods of UNJSPF participation under article 21(b) of the Pension Fund Regulations. In a reply dated 25 January 1993, the Secretary of the Pension Fund informed the Applicant that the relevant provisions of the Pension Fund Regulations precluded linking the Applicant's two periods of participation. On 15 February 1993, the Applicant requested a review of his case by the Standing Committee of the UN Joint Staff Pension Board (the Standing Committee).

On 30 September 1993, the Applicant was notified that, at its meeting held in June 1993, the Standing Committee had considered his request time-barred and therefore not receivable.

On 30 April 1994, the Applicant lodged an appeal with the Administrative Tribunal, against the decision by the Standing Committee that his appeal before that body was time-barred.

In its Judgement No. 734 of 21 November 1995, the Tribunal ruled that the Standing Committee had erred in holding that the Applicant's appeal had been time-barred. The Tribunal therefore ruled:

> "... that the appeal submitted by the Applicant on 15 February 1993, against the decision of the Secretary of the UNJSPB dated 25 January 1993, is not time-barred and should be considered by the UNJSPB on its merits."

The Applicant was then invited to submit his views on the merits of the case, which was reviewed by the Standing Committee at its 179th meeting on 17 July 1996.

On 19 August 1996, the Secretary of the Pension Fund wrote to the Applicant, advising him of the Standing Committee's decision on the merits of the case as follows:

> "...
>
> The Standing Committee considered the merits of your case on the basis of your submission, with attachments, of 26 May 1996. The Committee concluded that, by its clear terms, article 21(b) of the Regulations dealing with continuity of service did not apply in your case as in August 1987 you had commenced receiving from the Fund an early retirement benefit (...), in accordance with your payment instructions. The Committee noted further that the provisions of articles 21(b) and 24 in the Fund's Regulations, as adopted by the UN General Assembly, were statutory in nature and left no room for discretionary decisions by the Secretary of the Pension Board in individual cases. The Standing Committee consequently decided to uphold the decision taken by the Secretary that you had challenged in your appeal, as that decision had been arrived at in conformity with the applicable mandatory Regulations of the Pension Fund.
>
> ..."

On 10 November 1996, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Pension Fund Regulations, as applied in the Applicant's case, lead to anomalous and unfair results.. The Tribunal should use its discretion to interpret the Pension Fund Regulations and Rules in such a way that they do not result in injustice to pension holders such as the Applicant.

2. The Applicant should be allowed to link his two periods of pensionable service with the Organization.

Whereas the Respondent's principal contention is:

The clear text of article 21, paragraph (b) of the Pension Fund Regulations, as approved by the General Assembly, precludes linking the Applicant's two periods of pensionable service, since he was paid an early retirement benefit. The Regulations, as adopted, leave no room for discretionary interpretation.

The Tribunal, having deliberated from 30 October to 25 November 1997, now pronounces the following judgement:

I. The Applicant requests the Tribunal to rescind the decision of the Standing Committee of the UN Joint Staff Pension Board (the Standing Committee) that two distinct periods of participation in the Pension Fund by the Applicant during service with two member organizations could not be linked. The basis for the decision was the Applicant's failure to meet the requirements of article 21(b), which provides, in part, that "participation shall not be deemed to have ceased where a participant resumes his contributory service with a member organization within 12 months after separation without a benefit having been paid to him."

II. The relevant facts are not in dispute. The Applicant resumed service with a second member organization of the Pension Fund within 75 days of separation from the first member organization; however, during that period he also received pension benefits as a consequence of having elected to receive an early retirement benefit.

III. The Applicant requests the Tribunal to find that the receipt of early retirement benefits was a "technical violation" that should not be taken into account, as it resulted in extreme hardship to the Applicant, principally in the form of reduced pension benefits. He argues that electing to receive early retirement benefits during the break in service was his only means of supporting his family and

that, in the interest of fairness, the Respondent should overlook this technical violation of article 21(b).

IV. The Tribunal has consistently held that it cannot consider questions of fairness or unfairness in the provisions of the Regulations and Rules of the Pension Fund. (Cf. Judgements No. 685, Loguinov (1994), and No. 749, Demers Dear (1996)). The Regulations do not contemplate discretionary decision-making, either by the Pension Board or by the Tribunal, of the rules themselves but only as to their appropriate application. It is, however, within the Tribunal's power to review whether the application of the Pension Fund Regulations and Rules has been effected in an arbitrary, unfair or prejudicial manner (cf. Judgements No. 360, Taylor (1985) and No. 108, Khamis (1967)). The Tribunal finds that, in this case, these Regulations have not been applied in an unacceptable manner. The Applicant should have been aware of the substance of the rule when he elected to receive the benefit.

V. For the foregoing reasons, the Applicant's claims are rejected in their entirety.

(Signatures)

Samar SEN
Vice-President, presiding

Mayer GABAY
Member

Deborah Taylor ASHFORD
Member

New York, 25 November 1997

R. Maria VICIEN-MILBURN
Executive Secretary